

## APPEAL NO. 010338

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 10, 2001. The hearing officer determined that the appellant (claimant) had not sustained a compensable (low back) injury on \_\_\_\_\_, and that because the claimant did not have a compensable injury, the claimant did not have disability.

The claimant appealed, contending that various findings of the hearing officer were in error or not supported by the evidence; that the claimant, at a minimum, suffered a strain/sprain injury, citing various medical reports; and that "climbing stairs involved an instrumentality of the employer." The respondent (self-insured) school district responded asserting, among other things, that in cases of this kind "required Claimant to provide expert medical evidence" and urges affirmance.

### DECISION

Affirmed.

The claimant was a school bus driver and testified that on \_\_\_\_\_, he was getting ready to board his bus and as he stepped on the bottom step of the school bus he felt pain in his low back. There is conflicting evidence whether the claimant said his back "locked up," or that he "twisted" his back and whether he felt a twinge or sharp pain. The claimant was unable to board the bus, reported his injury and was taken to a hospital emergency room.

In \_\_\_\_\_, the claimant had sustained a compensable injury when he twisted his back. The claimant was hospitalized for that injury, missed about two months of work, and eventually returned to work on February 24, 1999, and continued to work "pain free" until this \_\_\_\_\_, incident. There is conflicting medical evidence whether the claimant sustained a herniated disc, had a disc bulge, or just a strain. The claimant was assessed at maximum medical improvement with a zero percent impairment rating for the 1998 injury.

The claimant was seen by Dr. G on September 13, 2000, and was diagnosed with "acute back pain." The claimant subsequently began treating with Dr. C, a chiropractor, who diagnosed lumbar sprain and radiculitis. Dr. C testified that without an MRI, which the self-insured refused to authorize, he was unable to tell whether the claimant sustained a new injury or had aggravated a preexisting injury (the 1998 injury). We note that aggravation of a preexisting injury or condition can be a new injury in its own right.

The hearing officer found that the claimant had sustained "an L4-5 herniated disc in \_\_\_\_\_"; that the claimant had returned to work for over a year after the \_\_\_\_\_ injury; and that the first step "of the school bus is higher than your usual stairs" but that "while climbing the stairs of the school bus Claimant felt pain but did not

sustain an injury." The evidence was conflicting and while another fact finder could have reached a different conclusion on the same facts, that does not alone provide us with a basis to disturb the hearing officer's decision. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We do, however, comment that we disagree with the self-insured's contention that this type of case necessarily requires expert medical evidence.

The hearing officer's decision and order are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Susan M. Kelley  
Appeals Judge